

APA-1

Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-3-176-.01

Rule Title: Composite Returns of Alabama S Corporations

New; Amended; Repealed; Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that result from the absence of the proposed rule? N/A

Are all the facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have any economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.



Signature of certifying officer
Date 10/20/2017

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10/96

**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: 810-3-176-.01

Rule Title: Composite Returns of Alabama S Corporations

 New X Amend Repeal Adopt by Reference

NO
 YES

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:

2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:

3. EFFECT OF THIS RULE ON COMPETITION:

4. EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

11. OTHER COMMENTS:

APA-2

**ALABAMA DEPARTMENT OF REVENUE
Individual and Corporate Tax**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-2-8-.12 Requirements for the Alabama Electronic Business Privilege Tax Return.
810-3-27-.05 Requirements for the Alabama Electronic Individual Income Tax Return.
810-3-27-.07 Requirements for Electronic Filing Software.
810-3-28-.05 Requirements for Electronic Filing Software - Partnership/LLC Returns.

INTENDED ACTION

Repeal, New

**SUBSTANCE OF
PROPOSED ACTION:
RULE NO. & TITLE**

The department proposes to repeal and replace the above mentioned rules in order to comply with the Red Tape Reduction Act 2013-088.

810-3-27-.06 Requirements for the Individual Income Tax Declaration for Electronic Filing.
810-3-27-.08 Acceptance into the Alabama Electronic Filing Program, Monitoring, and Revocation of Acceptance into the Program.
810-3-28-.02 Participation in the Federal/State Electronic Filing Program - Partnership/LLC Returns of Income.
810-3-28-.03 Requirements For The Alabama Electronic Partnership/LLC Return Of Income.
810-3-28-.04 Requirements for the Partnership/LLC Return of Income Declaration for Electronic Filing.
810-3-28-.06 Acceptance Into The Alabama Electronic Filing Program, Monitoring, And Revocation Of Acceptance Into The Program.
810-3-28-.07 Alabama Requirements for Mandatory E-File of Original Partnership/Limited Liability Company Income Tax Returns.
810-3-29-.08 Alabama Requirements for Mandatory E-File of Fiduciary Income Tax Returns.
810-3-176-.01 Composite Returns of Alabama S Corporations.

INTENDED ACTION

Amend

**SUBSTANCE OF
PROPOSED ACTION:**

The department proposes to amend the above mentioned rules in compliance of the Red Tape Reduction Act 2013-088. To add and remove applicable language.

RULE NO. & TITLE

810-3-28-.08 Alabama Requirements for Compliance with Administrative Rule 810-3-28-.07.

INTENDED ACTION

Repeal

**SUBSTANCE OF
PROPOSED ACTION:**

The department proposes to repeal the above mentioned rules in compliance of the Red Tape Reduction Act 2013-088. The rules language is no longer

applicable.

RULE NO. & TITLE

810-3-28-.09

Requirements for the Alabama Electronic Partnership/LLC Return of Income Tax Return.

INTENDED ACTION

New

**SUBSTANCE OF
PROPOSED ACTION:**

The department proposes to create the above mentioned rule to define the filing and payment requirements of an Alabama electronic partnership/LLC return of income.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **01:45 PM on Tuesday, December 12, 2017, Room 1203, First Floor**, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/tax-policy/>.

All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time following publication of the notice up until the conclusion of the hearing. Interested parties may also appear at the hearing to present their views.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Tuesday, December 12, 2017

CONTACT PERSON AT AGENCY:

Meagan Barrett

Alabama Department of Revenue
4131 Gordon Persons Building
Montgomery, Alabama 36132
(334) 242-1380



Michael D. Gamble, Secretary
Alabama Department of Revenue

810-3-176-.01 Composite Returns of Alabama S Corporations.

(1) Definitions:

(a) A "composite return" means an information return similar to the federal Schedule K-1 which contains information concerning one or more nonresident shareholder's distributive share of income, deductions, and losses.

(b) A "composite payment" means a payment of estimated individual income tax by the Alabama S corporation on behalf of the nonresident shareholders described in the accompanying composite return. The payment shall be considered a loan from the corporation to the shareholder, payable on demand, bearing interest from the date of the loan to the date of its payment, at the minimum applicable federal rate with respect to demand instruments, as provided under 26 U.S.C. § 7872.

(2) An Alabama S corporation may file a composite return and make composite payments on behalf of nonresident shareholders if there are one or more nonresident shareholders at any time during the taxable year.

(a) The composite return may be filed on behalf of some or all nonresident shareholders, and must be filed on behalf of nonresident shareholders for whom a Schedule NRA consent agreement has not been filed.

(b) Resident shareholders may not be included in a composite return, and composite payments may not be made on behalf of resident shareholders.

(c) S corporations which choose to file composite returns or which are required to file composite returns must do so on Form ~~20SC~~ PTE-C. Composite payments must be made on Form ~~20SC~~ PTE-C.

(d) In computing the amount of the composite payment, the Alabama S corporation shall multiply each nonresident shareholder's distributive share of income attributed to Alabama by 5%.

1. Each nonresident shareholder's distributive share of income is the sum of the shareholder's deemed distributive share of the Alabama portion of:

(i) Separately stated income, loss, deduction, or expense of the Alabama S corporation; provided that no deduction will be allowed for items of loss, deduction, or expense which are subject to other limitations on the Alabama individual income tax return Form 40NR - including federal income tax, contributions, investment interest expense, and casualty losses; and

(ii) Nonseparately stated income, loss, deduction, or expense of the Alabama S corporation.

2. In computing the amount of the composite payment, a loss for one nonresident shareholder may not be used to offset income or gain of any other nonresident shareholder.

3. In computing the amount of the composite payment, a net operating loss carryforward may not be used to offset income or gain.

(3) Composite returns and composite payments are due on the fifteenth day of the third month following the close of the Alabama S corporation's taxable year.

(a) 1. The entity will be granted ~~an automatic~~ a six month extension of time for filing the composite return.

~~2. An entity that fails to file the required return by the extended due date may not be granted an automatic extension the following (ensuing) year, but may be required to request the extension in writing. If a written request is required, the request must be made to the Commissioner of Revenue or to his designee, and must explain the reason for the request and the reason for failing to timely file the return in the previous year. The request also must state that the entity has no outstanding debts owed to the Department.~~

~~3. 2.~~ An extension of time granted to file the return pursuant to this section is not an extension of time for payment of tax. The amount of tax due must be paid on or before the due date of the return without regard to the extension to file the composite return.

(i) Payment of the tax shall be made via the paper **Business Income Tax Pass Through Entity** Payment Voucher or by Electronic Funds Transfer (EFT).

(ii) However, payment must be made via EFT if the payment exceeds \$750. Please refer to **Regulations Rules** 810-13-1-.01 and 810-13-1-.03.

(iii) Underpayment of tax penalties plus any applicable interest will be imposed as provided by law without regard to any extension granted under this section.

(b) Amended composite returns for refund or additional tax due for a taxable year will be accepted up to the extended due date for filing the Alabama S corporation return for the same taxable year.

(c) Refund requests or additional payments made after the extended due date for filing the Alabama S corporation return must be made on Alabama individual income tax Form 40NR by the nonresident shareholder(s).

(4) The S corporation is required to file a Schedule NRA consent agreement for each nonresident shareholder that does not participate in the composite filing.

(a) A Schedule NRA for each nonresident shareholder shall be due at the same time as the first S corporation return is due.

(b) If, during any subsequent taxable year, the Alabama S corporation has any nonresident shareholders for whom a Schedule NRA has not previously been filed, then a Schedule NRA is due for those nonresident shareholders at the same time as the annual return is due for that taxable year.

(c) The Alabama S corporation shall include each shareholder for whom a Schedule NRA is not timely filed in a composite return and make a composite payment as specified in paragraphs (2) & (3) above.

(d) The consent agreement must be ~~notarized or otherwise authenticated before some officer authorized to administer oaths~~ **signed by the shareholder**, and must contain the following information:

1. The name, address and social security number of the shareholder,
2. A recitation of the agreement to report and pay tax to Alabama on the shareholder's share of the Alabama S corporation income in exchange for the benefits of allowing the corporation to file an Alabama S corporation return, and
3. An agreement appointing the Alabama resident agent of the corporation and any agent or officer of the corporation present in Alabama as agent of the shareholder for service of process in any matter before the Department relating to the income tax returns of the shareholder and/or the corporation.

(e) If the stock is held by multiple owners (such as joint owners), each owner must execute a separate consent agreement.

(f) Each nonresident shareholder may designate any other person or firm present in Alabama as agent for service of process, in addition to the agents required to be appointed in subparagraph (d) 3, above.

(g) Any nonresident shareholder may, by power-of-attorney, authorize anyone to execute the required consent agreement on behalf of the shareholder. Such power-of-attorney, to be effective, must be filed with the Department on or before the due date (with extensions) of the first return in which a consent agreement is being executed under the power-of-attorney. The power-of-attorney need be filed only once and remains valid until the expiration date specified therein or until notice of revocation, cancellation, or modification is received by the Department. Such power-of-attorney may be in any form sufficient to indicate the intent of the parties, and must be notarized or otherwise authenticated before some officer authorized to administer oaths.

(h) 1. A nonresident is any person who is a legal resident of any state other than Alabama, or of any territory, possession, district, or foreign country.

2. The status as a resident or nonresident will be determined as of the date of any distribution or deemed distribution.

Authors: **Christina Hall, Tiniko Arrington**, Catherine McCary, CPA; Ann F. Winborne, CPA; Richard H. Henninger; and Ed Cutter, CPA.

Authority: **§§ Sections** 40-2A-7(a)(5) and 40-18-176, **Code of Alabama 1975**

History: Adopted December 4, 1992.

Amended: Filed March 26, 1998, effective date April 30, 1998.

Amended: Filed March 31, 2000, effective May 5, 2000.

Amended: Filed February 5, 2009, effective March 12, 2009.